

Amended Circuit Rule 5-2

Number of Copies

***Purpose of Amendment:** Conform language with revisions to Rule 25-5; clarify paper format procedures*

Petitioner shall file an original in paper format of petitions and any supporting papers and appendices filed pursuant to FRAP 5 unless the petition is submitted via Appellate ECF. If the answer is not required to be filed electronically, respondent shall file an original in paper format of an answer. (*New Rule 7/1/00; Rev. 12/1/09; Rev. 7/1/13*)

Cross Reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing (*Rev. 12/1/09; Rev. 7/1/13*)

Amended Circuit Rule 11-4.4

Transmittal of Clerk's Record

***Purpose of Amendment:** Ensure this Court's access to state court records filed or lodged in 28 U.S.C. § 2254 proceedings*

When the Court of Appeals at any time requires all or part of the clerk's record, the Clerk of the Court of Appeals will request the record from the district court. The district court clerk shall transmit the record, including ~~state court or~~ agency records lodged or filed with the district court during the district court proceedings, to the Court within 7 days of receiving the request. In appeals from the Bankruptcy Appellate Panel, records will be treated in the same fashion as records on appeal in cases arising from the district court.

The district court shall within 7 days after a notice of appeal is filed transmit any state court records lodged or filed in 28 U.S.C. § 2254 proceedings to this Court unless the documents are available in the district court's electronic case file or the district court determines that the notice of appeal was prematurely filed. (*New 7/1/13*)

Cross reference: Circuit Rule 22-1(b), Certificates of Appealability

Amended Circuit Rule 15-1

Review or Enforcement of Agency Orders

***Purpose of Amendment:** Conform language with revisions to Rule 25-5; clarify paper format procedures*

Review of an order of an administrative agency, board commission or officer (hereinafter “agency”) and applications for enforcement of an order an agency shall be governed by FRAP 15. If petitioner or applicant submits the petition or application in paper format, it does not need to supply the Court with the copies required by FRAP 15(c)(3). (Rev. 7/1/13)

Cross Reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing (Rev. 12/1/09; Rev. 7/1/13)

Amended Circuit Rule 15-3

Procedures for Review Under the Pacific Northwest Electric Power Planning and Conservation Act

***Purpose of Amendment:** Shift responsibility for consolidation to agency; extend deadline to intervene to reduce volume of motions*

15-3.1. Contents of Petition

~~The A~~ petition for review of a final action or decision of the Bonneville Power Administration (BPA) ratemaking decision under the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act”) shall be labeled “Petition for Review under the Northwest Power Act of (specify) Rates,” ~~identifying rates at issue. Any other petition shall be labeled “Petition for Review under the Northwest Power Act” and shall on the face of the petition identify any other known petitions for review of the same order or action. The petition must state on its face the date of the final action or decision from which review is sought, the title (if one exists), the BPA docket number (if one exists) and the Ninth Circuit docket numbers of any known petitions for review of the same final action or decision.~~ (Rev. 7/1/13)

15-3.2. ~~Service, Consolidation and Intervention~~

~~(a) Petitions shall, to the extent possible, comply with the service requirements of FRAP 15(c). If petitioners believe that compliance with FRAP 15(c) is impracticable or unreasonable in the circumstances, they may file a motion for a determination that service may be effected in a different fashion. Petitions for review of the same final action or decision under the Northwest Power Act will be consolidated for briefing and argument. Respondent must file a motion to consolidate all petitions from the same final action or decision within 10 days after the expiration of the time to file petitions for review from that final action or decision unless all the petitions already have been consolidated by the Court or a motion to consolidate all the petitions is pending. Petitions from related final actions or decisions may be scheduled for hearing before a single panel. (b) All petitions for review of the same rates will be automatically consolidated by the clerk. All petitions for review of the same order or action will be automatically consolidated by the clerk. Other petitions may be consolidated by motion. (Rev. 7/1/13)~~

15-3.3 Intervention

~~(c) Any petitioners in any 1 of 2 or more consolidated cases and any party granted leave to intervene in any 1 of 2 or more consolidated cases will be deemed to have intervened in all the consolidated cases. A party granted leave to intervene in 1 of a number of 2 or more consolidated cases will be deemed to have intervened in all consolidated cases. Intervention otherwise should be sought by motion under FRAP 15(d). Notwithstanding FRAP 15(d), motions to intervene may be filed within 30 days of the expiration of the time to file petitions for review from the final action or decision at issue. A motion to intervene must state on its face the date of the final action or decision from which review is sought, the title (if one exists), the BPA docket number (if one exists) and the Ninth Circuit docket numbers of any known petitions for review of the same final action or decision. (Rev. 7/1/13)~~

Cross Reference: Circuit Rule 1-2. Scope of Circuit Rules

Circuit Advisory Committee Note to Rule 15-3

Parties are encouraged to minimize the number of motions to intervene that they file. A petitioner need not file a motion to intervene in petitions challenging the same BPA final action or decision that its petition challenges. A non-petitioner

party seeking intervention may file a single motion to intervene – either in any one of the petitions from the final action or decision at issue or in the consolidated petition. The deadline set forth in FRAP 15(d) to file motions to intervene has been relaxed in these cases in order to make this possible. (New 7/1/13)

Amended Circuit Rule 15-4

Petitions for Review of Board of Immigration Appeals Decisions

Purpose of Amendment: Conform language with revisions to Rule 25-5; clarify paper format procedures

A petition for review of a Board of Immigration Appeals decision shall state whether petitioner (1) is detained in the custody of the Department of Homeland Security or at liberty and/or (2) has moved the Board of Immigration Appeals to reopen or applied to the district director for an adjustment of status. The petition shall be (1) accompanied by a copy of the Board of Immigration Appeals order being challenged, (2) include the petitioner's alien registration number in the caption and (3) filed in as an original in paper format unless submitted via Appellate ECF. (New 1/1/05; Rev. 12/1/09; Rev. 7/1/13)

Cross Reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing (Rev. 12/1/09; Rev. 7/1/13)

Amended Circuit Rule 21-2

Extraordinary Writs Format; Number of Copies

Purpose of Amendment: Conform language with revisions to Rule 25-5; clarify paper format procedures

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- (b) The petitioner shall file an original in paper format of the petition and any supporting papers and appendices unless the petition is submitted via Appellate ECF. (Rev. 7/1/13)

Cross Reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper

~~Format Excluded From Electronic Filing~~ (Rev. 12/1/09; Rev. 7/1/13)

Amended Circuit Rule 22-3

Applications for Authorization to File Second or Successive 2254 Petition or 2255 Motion – All Cases; Stay of Execution - Capital Cases

Purpose of Amendment: Conform language with revisions to Rule 25-5; clarify paper format procedures

- (a) **Applications:** Any petitioner seeking authorization to file a second or successive 2254 petition or 2255 motion in the district court must file an application in the Court of Appeals demonstrating entitlement to such leave under 28 U.S.C. § 2254 or § 2255. *See* Form 12. An original in paper format of the application must be filed with the Clerk of the Court of Appeals unless the application is submitted via Appellate ECF. (Rev. 7/1/13)

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Cross Reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing (Rev. 12/1/09; Rev. 7/1/13)

Amended Circuit Rule 25-5

Electronic Filing

Purpose of Amendment: Conform rule with current practice

(a) Participation

All attorneys and court reporters are required to submit all filings electronically using the Court's Appellate Electronic Case Files ("ECF") system unless the Court grants a request to be exempted from the requirement. Filers seeking an exemption must complete the Appellate ECF Exemption Form found on the Court's website.

~~If granted, the exemption will be applicable to pending and future cases for one calendar year.~~ If an exempt filer registers for the Appellate ECF system, that registration will abrogate the exemption. (Rev. 7/1/13)

Use of the Appellate ECF system is voluntary for all parties proceeding without counsel.

If a technical malfunction prevents access to the Appellate ECF system for a protracted period, the Court by special order may permit paper filings pending restoration of electronic access.

(b) Documents excluded from electronic filing requirement

(1) Documents to be maintained under seal and motions and notices seeking leave to file a document under seal under Circuit Rule 27-13 must be submitted in paper format unless the entire case is maintained under seal; and

(2) Excerpts of record under Circuit Rules 13-2, 17-1, 22-6, 30-1, and 32-4 must be submitted in paper format. (This subsection is modified by the provisional requirement found at www.ca9.uscourts.gov/excerpts.) (Rev. 7/1/13)

(c)(b) Documents that may be submitted either electronically or in paper format

(1) Petitions for review of agency orders under FRAP 15(a) and Circuit Rule 15-13;

- (2) Applications for enforcement of agency orders under FRAP 15(b) and Circuit Rules ~~15-1; and 15-4.~~
- (3) Petitions for permission to appeal under FRAP 5 and Circuit Rule 5-2;
- (4) Petitions for writs of mandamus or prohibition under FRAP 21 and Circuit Rules ~~21-12 and 21-3; and~~
- (5) Applications for leave to file second or successive petitions under 28 U.S.C. § 2254 or motions under 28 U.S.C. § 2255 and Circuit Rule 22-3.; (Rev. 7/1/13)
- ~~(6) Presentence reports and related documents under Circuit Rule 30-1.10;~~
- ~~(7) Requests for compensation for services and reimbursement for expenses under the Criminal Justice Act, 18 U.S.C. § 3006A and Circuit Rule 4-1(f);~~
- ~~(8) Motions under the Criminal Justice Act for interim payment, advance authorization for expert services and advance travel authorization;~~
- ~~(9) Documents to be maintained under seal and motions seeking leave to file a document under seal under Circuit Rule 27-13;~~
- ~~(10) Motions filed before the assignment of a Ninth Circuit docket number; and~~
- ~~(11) Excerpts of record under Circuit Rules 17-1 and 30-1.~~

(d)(c) Deadlines

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(e)(d) Technical requirements.

All documents must be submitted in Portable Document Format (“PDF”). The version filed with the Court must be generated ~~by publishing to PDF~~ from the original word processing file to permit the electronic version of the document to be

searched and copied. PDF files ~~images~~ created by scanning paper documents are prohibited; however, exhibits submitted as attachments to a document may be scanned and attached if the filer does not possess a word processing file version of the attachment. No single attachments shall ~~not~~ exceed 50 MB in size. Attachments that exceed that size must be divided into sub-volumes. (Rev. 7/1/13)

(f)(e) Signature

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(g)(f) Service

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(h)(g) Court-Issued Documents

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(Rev. 7/1/13)

Circuit Advisory Committee Note to Rule 25-5

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Practitioners appointed under the Criminal Justice Act are directed to the Court's website, www.ca9.uscourts.gov/attorneys for information regarding the submission procedures for claims for services and requests related to such services.

When exigent circumstances require submission of an emergency motion under Circuit Rule 27-3 prior to the assignment of an appellate docket number, the moving party shall contact the Motions Attorney Unit at 415/355-8020 to obtain authorization under Circuit Rule 25-3.1 to transmit the motion via facsimile or electronic mail. (New. 7/1/13)

Amended Circuit Rule 27-13

Sealed Documents, Motions to Seal

Purpose of Amendment: Allow electronic filing of documents when entire case is sealed

(a) Procedures

Sealed documents, notifications under subsection (b) and motions under subsection (c) of this rule must be filed in paper format unless the entire case is maintained under seal. (Rev. 7/1/13)

Cross-reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(b)(1)(9), Documents Excluded From Electronic Filing Requirement (New 1/1/09; Rev. 7/1/13)

New Circuit Rule 27-14

Motions to Transmit Physical and Documentary Exhibits

Purpose of adoption: Implement procedure to facilitate this Court's access to exhibits when appropriate

If a party asserts that review of an exhibit not currently available on the electronic district court docket is necessary to resolution of an issue on appeal, that party shall move the Court for leave to transmit to the Court a copy or replication of the exhibit. The copy, or photograph or other replication shall not be included with the motion. The Court will defer ruling on the motion until after the completion of briefing. (New. 7/1/13)

Advisory Committee Note to Rule 27-14

The parties should be aware that frequently this Court does not have access to trial exhibits because the district courts typically return them to the parties. Therefore, the parties are encouraged during the course of the district court proceedings to file documentary exhibits electronically and, when practicable, to photograph or otherwise electronically replicate physical exhibits in a manner that permits the exhibits' inclusion on the electronic district court docket. The parties may consider including portions of relevant documentary exhibits that were

admitted and/or offered and excluded in the excerpts of record. To the extent that Court finds additional exhibits relevant, the Court may direct the parties to provide the exhibits. (New 7/1/13)

Amended Circuit Rule 30-1.10

Presentence Reports

***Purpose of Amendment:** Allow electronic filing of presentence reports and related confidential documents*

In all cases in which the presentence report is referenced in the brief, the party filing such brief must file forward 4 paper copies of the presentence report and may file forward 4 paper copies of any other relevant confidential sentencing documents, under seal to the Clerk of the Court of Appeals. This filing shall be accomplished by mailing the 4 copies of the presentence report in a sealed envelope which reflects the title and number of the case and that 4 copies of the presentence report are enclosed. The copies of the presentence report and documents shall accompany be filed on the same day as the brief that references the report and documents excerpts of the record. The presentence report and documents shall remain under seal and but be provided by the Clerk to the panel hearing the case. (New Eff. 7/1/97; Rev. 12/1/09; Rev. 7/1/13)

~~Cross-reference: Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(b), Documents Excluded From Electronic Filing~~

Amended Circuit Rule 33-1

Circuit Mediation Office

***Purpose of Amendment:** Emphasize confidentiality of settlement process*

- (a) Purpose. The function of the Circuit Mediation Office is to facilitate the voluntary resolution of cases.
- (b) Attendance at Mediation Conferences. A judge or circuit mediator may require the attendance of parties, and counsel at a conference or conferences to explore settlement-related issues.

(c) Confidentiality. To encourage efficient and frank settlement discussions, the Court establishes the following rules to achieve strict confidentiality of the mediation process.

(1) The Circuit Mediators will not disclose mediation related communications to the judges or court staff outside the mediation unit.

(2) Documents, e-mail and other correspondence sent only to the Circuit Mediators or to the mediation unit are maintained separately from the court's electronic filing and case management system and are not made part of the public docket.

(3) Should a Circuit Mediator confer separately with any participant in a mediation, those discussions will be maintained in confidence from the other participants in the settlement discussions to the extent that that participant so requests.

(4) Any person, including a Circuit Mediator, who participates in the Circuit Mediation Program must maintain the confidentiality of the settlement process. The confidentiality provisions that follow apply to any communication made at any time in the Ninth Circuit mediation process, including all telephone conferences. Any written or oral communication made by a Circuit Mediator, any party, attorney, or other participant in the settlement discussions:

(A) except as provided in (B), may not be used for any purpose except with the agreement of all parties and the Circuit Mediator; and

(B) may not be disclosed to anyone who is not a participant in the mediation except

(i) disclosure may be made to a client or client representative, an attorney or co-counsel, an insurance representative, or an accountant or other agent of a participant on a need-to-know basis, but only upon receiving assurance from the recipient that the information will be kept confidential;

(ii) disclosure may be made in the context of a subsequent confidential mediation or settlement conference with the agreement of all parties. Consent of the Circuit Mediator is not required.

(5) Written settlement agreements are not confidential except as agreed by the parties.

(6) This rule does not prohibit disclosures that are otherwise required by law. (New 7/1/13)

(d) Binding Determinations by Appellate Commissioner. In the context of a settlement or mediation in a civil appeal, the parties who have otherwise settled the case may stipulate to have one or more issues in the appeal submitted to an appellate commissioner for a binding determination.

~~The primary purpose of a prehearing conference shall be to explore settlement of the dispute that gave rise to the appeal. The judge or court mediator may require the attendance of parties and counsel. Information disclosed to the judge or court mediator in settlement discussions shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the settlement program participants.~~

Amended Circuit Committee Advisory Note to Rule 33-1

(a) Mediation Conferences: *The Circuit Mediation Office is staffed with experienced attorney mediators and is an independent unit in the Court. In any case, the Court may direct that a conference be held, in-person or over the telephone, with counsel, or with counsel and the parties or key personnel, ~~including insurance representatives.~~ A judge who conducts a settlement conference pursuant to this rule will not participate in the decision on any aspect of the case, except that he or she may vote on whether to take a case en banc. (Rev. 12/1/09; Rev. 7/1/13)*

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(c) Binding Determination by Appellate Commissioner: ~~*In the context of a settlement or mediation in a civil appeal, the parties may stipulate to having one or more issues in their appeal referred for a binding determination by an Appellate Commissioner.*~~ *Where the parties enter into such a stipulation as set forth at (d) above, the matter may be handled with abbreviated and accelerated briefing and a guaranteed opportunity for in-person or telephonic oral argument before the Appellate Commissioner. The Appellate Commissioner will issue a determination and, if requested, a written statement of reasons. The determination will have no*

precedential effect and will be final and nonreviewable. Cases will ordinarily be referred to the Appellate Commissioner through the Court's mediation program. In some instances, the Court's pro se unit may also alert parties to the availability of this program. For further information, please contact the Circuit Mediation Office at (415) 355-7900. (New 7/1/01; Rev. 7/1/13)

Amended Circuit Rule 46-5

Restrictions on Practice by Former Court Employees

***Purpose of Amendment:** Clarify impact of post-disposition proceedings on eligibility to practice*

No former employee of the Court shall participate or assist, by way of representation, consultation, or otherwise, in any case that was pending in the Court during the employee's period of employment. It shall be the responsibility of any former employee, as well as the persons employing or associating with a former employee in the practice of law before this Court, to ensure compliance with this rule.

An attorney who is a former employee may apply to the Court for an exemption. The application must demonstrate that ~~there has been a strict compliance with the rule with reference to the particular case, that~~ the attorney had no direct or indirect involvement with the case during employment with the Court, and that the attorney was not employed or assigned in the chambers of any judge who participated in the case during the attorney's employment with the Court. (Rev. 1/1/11; Rev. 7/1/13)

New Circuit Committee Advisory Note to Rule 46-5

The rule is intended to avoid the appearance of impropriety if a former court employee were to work on a matter that was pending in the court during the employee's period of employment.

With respect to attorneys employed or assigned in the chambers of any judge, an application for an exemption shall show that the judge did not participate in ruling on any motion or other aspect of the case, including making, responding to, researching, or voting on an en banc call during the employee's period of employment. (New 7/1/13)

